IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.3546 OF 2004

IN

SUIT NO.1409 OF 1976

...

R.C. Goenka ...Plaintiff

v/s.

Nirmalkumar Purshottam Rungta

and anr. ...Defendants

...

Mr.P.N.Mody with Mr.Ravi Goenka i/b Mr.Y.R.Shah for the Plaintiff.

Mr.Milind Vasudeo i/b Mr.J.S.Chandnani for Defendants Nos.1A & 1B.

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CORAM: D.K.DESHMUKH, J.

DATED: 23RD DECEMBER,2005

P.C.:

1. The principal prayer in this Notice of Motion, which is taken out by the Plaintiff, is for appointment of the Receiver on the trust property on the allegation that the trustees are permitting change of tenancy and also change of user and they are not taking serious action against the tenant and their assignees. It is common ground that a prayer for appointment of receiver was made in a Notice of Motion previously taken out in this suit. The Division Bench of this Court by order dated 10th August, 1988 declined to appoint the Receiver, in stead made an order restraining the trustees from transferring the tenancies and providing that in case the tenants transfer the tenancy the trustees should take action against them. The Supreme Court by its order dated 15-3-1989 made some additions to the interim order and now again a prayer is made by this Notice of Motion for appointment of the Court Receiver, because according the Plaintiff, the trustees are in hand in gloves with the tenants.

They are permitting transfer of tenancy by the tenants. They are also permitting change of user and they are not taking action against the persons involved seriously. It is also submitted that the trustees are likely to permit transfer of tenancy in future and this will result in loss to the trust.

2. Operative part of the order of the Division Bench reads as under:-

> "We accordingly allow these Appeals and set aside the orders of the learned single Judge appointing receiver. We direct that pending the disposal of the two suits, without the prior permission of the Court, the trustees will not transfer by sale, mortgage or lease Walkeshwar property or any part thereof. The trustees will not allow any transfer of the tenancies held by present tenants. They will not recognise occupant, if any, of any portion of the said property as tenant or as licensee. In the event any attempt by the tenants and/or occupants to transfer, assign and/or sublet their tenancies and/or accommodation is

brought to the notice of the trustees, the trustees will forthwith take steps in accordance with law. The trustees will immediately prepare and submit in a sealed cover to this court within two months from today a list of the tenants of the flats and/or accommodations/garages of the property indicating therein the dates of commencement of the tenancy if known, the approximate accommodation occupied, the rent payable and also the month or the period upto which such rent has been paid and arrears of rent, if any. The trustees will continue to maintain regular accounts of the trust property and submit half-yearly statements of accounts in a sealed cover to this Court before 15th August and 15th January each year. The first such account should be kept from 1st August 1988. Until the disposal of the suits the decrees for eviction, if any, obtained by the trustees either against Radheshyam or Sitabai shall not be executed unless otherwise ordered by this Court. The trustees will continue to keep the

funds of the trust estate in separate bank account. They will also take steps for preservation of Walkeshwar property and, if necessary, take up repairs within the funds available.

3. The Supreme Court modified the order made by the Division Bench in following manner:

We see no grounds to entertain the special leave petitions except, however, to make the following provisions in addition to the directions given by the Division Bench:-

(i) The list of tenants of the flats and/or accommodation/garages of the property indicating therein the dates of the commencement of the tenancy if known, the approximate accommodation occupied, the rent payable and also the month or the period upto which such rent has been paid and arrears of rent, if any which the trustees have been asked to submit in a

sealed cover within a period of two months should be made known to the petitioners themselves. Therefore, it is ordered that the petitioners will be entitled to an inspection of the list filed by the trustees.

(ii) Likewise the half-yearly statement of accounts which the trustees have been directed to file should also be made available for inspection by the petitions as and when the statements of accounts are filed.

(iii) If there is any change of user of any of the premises said to belong to the trust, takes place, the respondents, as soon as they come to know of it, should give notice of the same to the petitioners and immediately initiate appropriate proceedings against the tenants.

With these observations, the special leave petitions are disposed of.

4. Perusal of the order made by the Division Bench quoted above shows that while making an interim order, it was in the contemplation of the Division Bench that though the trustees will not permit transfer of tenancy, the tenants themselves may transfer the tenancies. Therefore, the Division Bench has made an order for the trustees to take action against such assignment and transfers as also change of user. It is common ground before me that whenever there have been change of user or assignment of tenancy, the trustees have instituted suits. In my opinion, therefore, merely because the things which were in the contemplation of the Division Bench while making the interim order have actually happened, the case for appointment of the Receiver is made out.

5. During the hearing of the motion, an offer was made on behalf of the trustees that if according to the Plaintiff the trustees are not seriously prosecuting the suit, the Plaintiff can take over prosecution of the suit on behalf of the trust. The Plaintiff has accepted that offer. In my opinion, there is no warrant for appointment of Receiver on

the property. The property is being safeguarded by the trustees and the income of the trust property is also being accounted for. Notice of Motion is, therefore, disposed of.

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